

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
Green Bay Division**

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APPLETON PAPERS INC. and  
NCR CORPORATION,

Plaintiffs,

v.

GEORGE A. WHITING PAPER CO., et al.,

Defendants.

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No. 08-CV-00016-WCG

**UNITED STATES' MOTION FOR LEAVE TO FILE ACCOMPANYING BRIEF  
AS AMICUS CURIAE**

On April 28, 2008, the Court entered an Order allowing the United States until May 24, 2008 to determine whether to seek leave to file a brief as amicus curiae on issues raised in connection with the pending motions to dismiss certain portions of the Plaintiffs' Third Amended Complaint in this case. The United States hereby requests that the Court grant the United States leave to file the accompanying brief as amicus curiae. As explained below, the United States also requests that the Court grant the United States permission to file an oversized brief and accept the accompanying brief pursuant to Civil L.R. 7.1(f).

1. As recognized by the Court's April 28 Order, the United States has a substantial interest in assuring that the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-75, is interpreted, as intended by Congress, in a manner that promotes the protection of public health and the environment through the efficient and effective cleanup and restoration of contaminated sites such as the Lower Fox River and Green Bay Site (the "Fox River Site"). The United States, primarily through the U.S.

Environmental Protection Agency, administers the program for the cleanup of environmentally-contaminated sites around the country under CERCLA. Other agencies of the United States, such as the U.S. Department of the Interior, are charged with responsibility for assessing and pursuing recovery of damages under CERCLA for injuries to natural resources caused by releases of hazardous substances at such sites, and for using any damages recovery to restore, replace, or acquire the equivalent of the injured resource. The United States has already filed several CERCLA enforcement actions regarding the Site against some of the parties to this action, and has entered into partial settlements with a number of the parties.

2. The accompanying brief addresses several significant issues raised by the parties' arguments on the motions to dismiss, including issues regarding the interpretation of CERCLA and the Supreme Court's decision in United States v. Atlantic Research Corp., 127 S. Ct. 2331 (2007). The views of the United States may be of substantial assistance to the Court in resolving issues raised in the motions to dismiss, such as the question whether plaintiffs who have, or at one time had, a remedy under § 113(f) of CERCLA are required to bring claims under that provision, rather than § 107(a)(4)(B) of CERCLA.

3. The United States is aware that Civil L.R. 7.1(f) generally limits principal briefs on motions to "30 pages . . . exclusive of pages containing the statement of facts." The United States' proposed brief comprises 40 pages (including its statement of facts). That is because the brief offers pertinent background information on CERCLA and the Fox River Site, as well as the United States' detailed views on complex issues posed by the pending motions. The United States respectfully requests that the Court grant the United States permission to file an oversized brief and accept the accompanying brief pursuant to Civil L.R. 7.1(f).

Respectfully submitted,

For the United States of America

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Dated: May 22, 2008

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## **CERTIFICATE OF SERVICE**

I certify that on May 22, 2008, a copy of the foregoing Motion and the accompanying proposed Brief were sent via the Court's electronic case filing system to the following counsel:

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